112, 70 Atl. 579. This is so in most jurisdictions even if the sale is not to be until a definite time or until the happening of some designated event. *Handley* v. *Palmer* (C. C. A. 1900) 103 Fed. 39; *Nelson* v. *Nelson* (1905) 36 Ind. App. 331, 75 N. E. 679; *Chick* v. *Ives* (1902) 2 Neb. Unoff. 879, 90 N. W. 751. In others, no conversion occurs under such circumstances until the time comes or the event happens. *Bank of Ukia* v. *Rice* (1904) 143 Cal. 265, 76 Pac. 1020; see *Underwood* v. *Curtis* (1891) 127 N. Y. 523, 533, 534, 28 N. E. 585. But the court will never imply a conversion unless the testator clearly intends it. *Harris* v. *Achilles* (1909) 129 App. Div. 847, 114 N. Y. Supp. 855. A direction to sell is insufficient, if contingent on consent. *Scott's Estate* (1908) 37 Pa. Super. 198. When there is no conversion, the devisee has an alienable interest in the realty, subject to divestment by the exercise of the power of sale. *Williams* v. *Lobban* (1907) 206 Mo. 399, 104 S. W. 58; *Hatt* v. *Rich* (1900) 59 N. J. Eq. 492, 45 Atl. 969. Then, whether or not there has been a conversion, one purporting to hold under the devisee has no claim against the land after the exercise of the power. *Beaver* v. *Ross* (1908) 140 Ia. 154, 118 N. W. 287. The instant case, therefore, soundly holds that the defendant has no lien upon the realty. The question of equitable conversion, however, is of importance to the defendant because, there having been none, one claiming under the devisee has a lien on the proceeds of the sale. See *Sayles* v. *Best* (1893) 140 N. Y. 368, 374, 375, 35 N. E. 636; *Williams* v. *Lobban, supra,* 416, 418. Whereas if there has been a conversion, a judgment docketed thereafter, never having constituted a lien against the land, is not a lien on the proceeds of the sale. *Darst* v. *Swearingen, supra.*

SALES—CONTRACT TO SELL FUTURE GOODS—"TIME OF SALE."—In April, S contracted to sell and deliver in September, and B to accept, a quantity of sheeting of I's make, delivery to be at I's mill, "shipping instructions later." During September B sent no instructions, but on October 5th wrote a letter repudiating the contract on the ground of failure to deliver on time. On October 7th S wrote, enclosing invoices and asked for shipping instructions, which B refused to give. S, suing for damages, alleged readiness and willingness to perform, but no tender of delivery. The defence was that under § 43 (3) of the Uniform Sales Act, N. Y. Laws 1911 c. 571, § 124 (3), S had not made a delivery. *Held,* for S. § 43 (3) was inapplicable because the goods were not in existence at the time of the contract to sell. *Percy Kent Co.* v. *Silberstein* (1922) 192 N. Y. Supp. 498.

The Uniform Sales Act, § 43 (3), defines "delivery" when the goods are in the hands of a third person at the "time of sale." The court, in holding the section inapplicable, assumed that "time of sale" meant "time of contract to sell." This assumption was unnecessary, because there was no specification or appropriation, and thus no specified goods at any time to which the section could apply. The case, however, suggests the novel question of the meaning of "time of sale" in § 43 (3). At common law in such a case there was no delivery within the Statute of Frauds unless the third person attorned. The corresponding section of the English Sale of Goods Act, § 29 (3), is regarded as a codification of this rule. See Chalmers, *Sale of Goods* (8th ed. 1920) 79 note (r); Benjamin, *Sales* (6th ed. 1920) 794 note (e), citing *Bentall* v. *Burn* (1824) 3 B. & C. 423; see *Boardman* v. *Spooner* (1866) 95 Mass. 353, 357. At common law, a purported sale of goods in a third person's possession transferred title immediately without attornment. *Sigerson* v. *Kahmann* (1866) 39 Mo. *206. The question as to when is the "time of sale" is not dependent upon the requirements for delivery. The draftsman of the Uniform Sales Act declares "the most fundamental distinction in the law of sales" to be that between a "contract to sell," *i. e.,* a contract for a subsequent transfer of title, and a "sale" or immediate transfer of ownership. See 1

Williston (1909) *Sales*, § 2; Uniform Sales Act, § 1; *Idaho Implement Co.* v. *Lambach* (1909) 16 Idaho 497, 509, 510, 512; 101 Pac. 951. "Time of sale" in the corresponding section of the English Act is said by its draftsman, Chalmers, to mean the time when the property passes. 25 Halsbury (1912) *Laws of England* 210 note (t). And in the absence of judicial authority this seems to be the better interpretation because there was no appropriation, hence no passing of title, and consequently no "time of sale." See Uniform Sales Act, §§ 17, 19 (4); *American Hide Co.* v. *Chalkley* (1903) 101 Va. 458, 464, 44 S. E. 705.

SALES—C. I. F. CONTRACT—MEASURE OF DAMAGES.—Action by an English vendee for breach of contract to sell 5,000 lbs. of thorium by a Chicago vendor, c. i. f. London dock. On appeal from a judgment declaring the measure of damages to be the difference between the contract price and the market price at London, the destination, *held*, judgment reversed. *Seaver* v. *Lindsay Light Co.* (decided April 18, 1922) N. Y. Ct. of App. (not yet reported).

For an adverse criticism of the decision in the Appellate Division, see (1921) 21 COLUMBIA LAW REV. 724. The reversal by the Court of Appeals has the salutary effect of bringing the measure of damages for a c. i. f. contract into conformity with the general rule of damages which is the difference between the contract price and the market price at the place of delivery.

TORTS—PROXIMATE CAUSE—SUICIDE.—The complaint alleged that the defendants had arrested the plaintiff's intestate, held him in confinement against his will, inflicted bodily injury upon him, and subjected him to mental torture by threats of physical injury and death. The decedent became mentally deranged and committed suicide. In an action for wrongful death, *held*, one judge dissenting, the demurrer to the complaint was rightly sustained, since the suicide was not the natural and probable consequence of the defendants' wrongful acts. *Salsedo* v. *Palmer* (C. C. A. 1921) 278 Fed. 92.

In view of the decision in *Scheffer* v. *Washington City etc., R. R.* (1881) 105 U. S. 249, holding suicide not a natural and probable consequence of a railway injury, and therefore the proximate cause of death, the result of the majority in the principal case is not surprising. In this case, however, the defendants were consciously engaged in committing unlawful acts, whereas in the *Scheffer* case the defendant was merely negligent. A wilful tort gives rise to liability for more remote consequences than mere negligence. *Cf. Wyant* v. *Crouse* (1901) 127 Mich. 158, 86 N. W. 527. The principal case can, therefore, be distinguished from the *Scheffer* case on this ground. Suicide has been held no bar to recovery under workmen's compensation acts. *Sponatski's Case* (1915) 220 Mass. 526, 108 N. E. 466; see *Malone* v. *Cayzer, Irvine & Co.* (1908) 45 Scot. L. R. 351, 353. But it should be noted that under these statutes the result need not be a probable, but simply an actual consequence of the injury. The court in the instant case, relying on the *Scheffer* case, regarded the suicide as a break in the chain of causation. This would seem sound where the act of self destruction was voluntary. *Brown* v. *American Steel & Wire Co.* (1908) 43 Ind. App. 560, 88 N. E. 80. But when done in the frenzy of an uncontrollable impulse, the defendant, whose wrongful conduct placed the deceased in this plight, should be held responsible. See *Koch* v. *Fox* (1902) 71 App. Div. 288, 298, 299, 75 N. Y. Supp. 913; *Daniels* v. *New York etc. R. R.* (1903) 183 Mass. 393, 398, 399. This distinction has been drawn in determining the meaning of suicide as contained in policies of insurance. *Cf. Newton* v. *Mutual Benefit Life Ins. Co.* (1879) 76 N. Y. 426; *Manhattan Life Ins. Co.* v. *Broughton* (1883) 109 U. S. 121, 3 Sup. Ct. 99. Therefore, it seems as if the demurrer in the instant case should have been overruled and the plaintiff given an opportunity to prove the nature of the suicide.